Supreme Court, U.S.
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No. _____

In The Supreme Court of the United States

Brian A. Faught,
Petitioner,

V.

Patton and Kay Stevens,
Respondents,

Petition for Writ of Certiorari
To The Supreme Court of Ohio,
Twelfth District Court Of Appeals,
Clermont County Court Of Common Pleas,
Domestic Relations Division

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Questions Presented

1. Does Ohio's Third-Party Visitation Statutes 3109.11 and 3109.12 violate a fit Parent's Fundamental Right to care, custody and control of their children?

2. Did the courts of record misapply the Ohio Third-Party Statutes, as structured, to the case at Bar?

3. When a Fundamental Right is under appeal, can the acting Magistrate issue an additional order that violates the same fundamental right?

4. Can a local court rule supersede a State statute?

5. Does a court abuse its power by issuing orders that if appealed would prevent a fit parent from seeing their child or properly getting proper control of their child?

Table of Contents

Table of Authorities

Table of Appendices

Introduction

This is a case that parallels a settled issue of fundamental rights. In the year 2000 the United States Supreme Court issued a decision in Troxel v. Granville that parental rights is the oldest of all fundamental rights and a state may not inject its own opinion simply because it believes it could make a better decision. The Troxel Court was precise in its determination that a state has no compelling interest, as children are not a mere creature of the state, to inject itself into the liberty interest of a fit parent to direct the upbringing of their children. The United States Supreme Court further protected the fundamental rights of parents when it refused to subject the parent to further litigation in Arizona's Dodge v. Granville (No. 1 CA-CV 99- 0582 Ariz.App.Div.1 05/23/2000), where the state supreme court upheld the right of a parent to determine with whom their child may associate. Ohio has 2 statutes in place that conflict with the United States Supreme Court's findings as well as several other State Courts of last resort on the issue of third party visitation.

Parents in Ohio are faced with unconstitutional State intrusion of their right to care, custody and control of their children as they see fit as a result of the precedents set in the case at bar. It is paramount the that this Court take jurisdiction of this case to protect all parent's Constitutional Rights as provided by the 14th Amendment of the United States Constitution.

Jurisdiction

The Supreme Court of Ohio rendered its decision on June 18, 2008. That court refused jurisdiction subsequently dismissing this case without review. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1).

Constitutional and Statutory Provisions

The Fourteenth Amendment of the United State Constitution

Section 1 states: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article One Section One, The Bill of Rights of the Ohio Constitution

provides certain Inalienable Rights. It states: All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.

Ohio Revised Code

3109.11 Companionship or visitation rights for parents or other relatives of deceased mother or father.

3109.12 Mother unmarried - parenting time, companionship or visitation rights.

3109.051 Parenting time - companionship or visitation rights.

(D) In determining whether to grant parenting time to a parent pursuant to this section or section 3109.12 of the Revised Code or companionship or visitation rights to a grandparent, relative, or other person pursuant to this section or section 3109.11 or 3109.12 of the Revised Code, in establishing a specific parenting time or visitation schedule, and in determining other parenting time matters under this section or section 3109.12 of the Revised Code or visitation matters under this section or section 3109.11 or 3109.12 of the Revised Code, the court shall consider all of the following factors:

(1) The prior interaction and interrelationships of the child with the child's parents, siblings, and other persons related by consanguinity or affinity, and with the person who requested companionship or visitation if that person is not a parent, sibling, or relative of the child;

(2) The geographical location of the residence of each parent and the distance between those residences, and if the person is not a parent, the geographical location of that person's residence and the distance between that person's residence and the child's residence;

(3) The child's and parents' available time, including, but not limited to, each parent's employment schedule, the child's school schedule, and the child's and the parents' holiday and vacation schedule;

(4) The age of the child;

(5) The child's adjustment to home, school, and community;

(6) If the court has interviewed the child in chambers, pursuant to division
(C) of this section, regarding the wishes and concerns of the child as to parenting time by the parent who is not the residential parent or companionship or visitation by the grandparent, relative, or other person who requested companionship or visitation, as to a specific parenting time or visitation schedule, or as to other parenting time or visitation matters, the wishes and concerns of the child, as expressed to the court;

(7) The health and safety of the child;

(8) The amount of time that will be available for the child to spend with siblings;

(9) The mental and physical health of all parties;

(10) Each parent's willingness to reschedule missed parenting time and to facilitate the other parent's parenting time rights, and with respect to a person who requested companionship or visitation, the willingness of that person to reschedule missed visitation;

(11) In relation to parenting time, whether either parent

previously has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child; whether either parent, in a case in which a child has been adjudicated an abused child or a neglected child, previously has been determined to be the perpetrator of the abusive or neglectful act that is the basis of the adjudication; and whether there is reason to believe that either parent has acted in a manner resulting in a child being an abused child or a neglected child;

(12) In relation to requested companionship or visitation by a person other than a parent, whether the person previously has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child; whether the person, in a case in which a child has been adjudicated an abused child or a neglected child, previously has been determined to be the perpetrator of the abusive or neglectful act that is the basis of the adjudication; whether either parent previously has been convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding; whether either parent previously has been convicted of an offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding and caused physical harm to the victim

in the commission of the offense; and whether there is reason to believe that the person has acted in a manner resulting in a child being an abused child or a neglected child;

(13) Whether the residential parent or one of the parents subject to a shared parenting decree has continuously and willfully denied the other parent's right to parenting time in accordance with an order of the court;

(14) Whether either parent has established a residence or is planning to establish a residence outside this state;

(15) In relation to requested companionship or visitation by a person other than a parent, the wishes and concerns of the child's parents, as expressed by them to the court;

(16) Any other factor in the best interest of the child.

3109.09 Liability of parents for willful damage of property or theft by their children.

3109.10 Liability of parents for willful and malicious assaults by their children.

3109.401 State policy on parent and child relationship.

(A) The general assembly finds the following:

(1) That the parent and child relationship is of fundamental importance to the welfare of a child, and that the relationship between a child and each parent should be fostered unless inconsistent with the child's best interests;

(2) That parents have the responsibility to make decisions

and perform other parenting functions necessary for the care and growth of their children;

Statement of the Case

A. Factual Background

Katherine Bauman passed away on April 10, 2005. She was the mother of my 2 oldest children. Upon her death I proceeded to handle all the legal matters necessary to transfer custody of my children to me and to stop child support. My daughter was having real difficulties with the death of her mother so I worked out an agreement with her grandparents to allow her to stay with them with she finished out the school year provided they followed certain rules. One of those rules was that they would get her to the psychologist with whom I had set up counseling.

After several trips to counseling the grandparents abruptly quit bringing her to counseling. I did not find out of their intentions until I arrived at the office of the psychologist and they did not arrive. They promptly filed a motion with the court for custody of my children. It was at that point they began refusing to allow me to see or speak to my daughter.

B. Procedural History

The grandparents filed a motion for custody pursuant to O.R.C. 3109.11. The Clermont County Domestic Relations Court issued temporary motions that did nothing more than to give me visitation of my daughter. An August 12, 2005 order gave me custody of my children but subjected me to a severe intrusion on my parental rights. I was ordered to send my children away 2 weekends a month. I was also ordered to take my children to meet with a GAL.

The magistrate entered new orders again on October 14, 2005 that continued the current visitation orders but also forced me to participate in counseling to help the grandparents deal with their grief in the hopes of helping them to better participate in the children's lives.

In November of 2005 the step-father filed a motion to intervene which was granted by this court pushing a final hearing date even further out.

On June 13, 2006 the magistrate in this case finally issued a decision from the final hearing. She cited nothing more than a disagreement between the parties as to what resolution would be best for the children. Not only did the magistrate continue to allow the grandparents 2 weekends a month but she also allowed the grandparents to make decisions about with whom the children would associate.

November 1, 2006 the trial court issued decisions on objections. The trial court acknowledges that the magistrate decision on visitation does not give special

weight to the father's wishes and concerns. The trial court goes on to input its own decision over the wishes and concerns of the father without even gathering any new evidence or testimony.

On January 22, 2008 The Twelfth District Court of Appeals issued its order upholding the decisions of the trial court.

June 18, 2008 The Supreme Court of Ohio refused jurisdiction and dismissed the appeal.

Reasons for Granting the Writ

The petition should be granted for several reasons. It is paramount that the United States Supreme Court issue further clarification as to when it is or is not permissible for a state to inject its own opinion over that of a fit parent. In Troxel v. Granville it was state that parental rights were the oldest of all fundamental rights, yet states continue to draft legislation subjecting fit parents to lengthy and costly litigation defending these rights. Many state courts are upholding the standards set by the Troxel Court, however some states such as Ohio continue to infringe on the 14th Amendment rights of parents. Ohio steps in to override the decisions of single parents disregarding the findings of Troxel that a single parent family is an intact family.

I. Does Ohio's Third-Party Visitation Statutes 3109.11 and 3109.12 violate a fit Parent's Fundamental Right to care, custody and control of their children?

Ohio revised Code 3109.11 and 3109.12 infringe on a single parents 14th Amendment right to care, custody and control of their children per the Troxel (530 U.S. 57 2000) standards. These statutes conflict with The United States Supreme Court findings as well as other State Courts of Last resort such as Illinois (Docket Nos. 92048, 92135 cons.-Agenda-January 2002 Wickham v. Byrne [clear constitutional directive that state interference should only occur when the health, safety, or welfare of a child is at risk]), Arizona (Lucille v. Dodge, No. 1 CA-CV 99-0582 [the court may not determine with whom the children shall associate), Georgia (FOWLER v. KNEBEL S95A1700 [unconstitutional under both the state and federal constitutions because it does not clearly promote the health or welfare of the child and does not require a showing of harm before state interference is authorized]) and Texas (In re Karen Mays-Hooper NO. 04-1040 [(1) the child's mother was not unfit, (2) her decisions about grandparent access were given no deference, and (3) she was willing to allow some visitation]). The Ohio Statutes in question immediately put the burden of proof on a fit parent to prove the visitation is not in the best interest of their children. The state hinges its argument on a list of factors (O.R.C. 3109.051) a court must consider when deciding on "reasonable" visitation in its perceived best interest. These factors are a list of considerations a fit parent would

have already considered. Number 15 states "the wish and concerns of the parent as expressed to the court." Nowhere does it state that these wishes be granted special weight nor extreme deference.

The statutes in question are unconstitutional on their face. They violate the State and Federal Constitutions and put undue burdens on intact families. They also present conflicting issues with other Ohio statutes. O.R.C. 3109.401 specifically outlines the parent child relationship. That is a relationship that can be directly affected by third party visitation statutes. Furthermore statutes 3109.09 and 3109.10 put an extreme burden on a parent for liabilities of the actions of their children. These are liabilities that don't go away when the state takes upon itself to take over the decision making from the parent. This is a case that parallels the Troxel case. I did not completely oppose visitation. There was no evidence that I was an unfit parent. The State has no compelling interest in the parental decision making process of a single parent.

II. Did the courts of record misapply the Ohio Third-Party Statutes, as structured, to the case at Bar?

The magistrate in this case disregarded the behavior of the third-party interveners. She moved forward with the opinion that visitation with the grandparents was the best thing for the grandparents. At times she even seemed to allow sympathy for the grandparents guide her decisions. In the end she did not state which factors in O.R.C. 3109.051 guided her decision making process. She

simply stated "there was a genuine disagreement between the father and the grandparents as to what was best for the children."

On objections to the trial court, the trial court stated that the magistrate did not give special weight to the wishes and concerns of the father. Instead of reversing the decision or gathering new evidence, the trial court input its own opinion for visitation over the wishes of the parent.

The Twelfth District court of Appeals only decided that they could not overrule decisions of a superior court.

III. When a Fundamental Right is under appeal, can the acting Magistrate issue an additional order that violates the same fundamental right?

While I had objections before the trial court concerning my fundamental rights as a parent, the magistrate ordered me to take my children to a F.I.D.S. program along wit the grandparents. I filed objections to this as well as it violated my rights of determining with whom my children shall associate. Also in question was rather this order could be put forth while the same question was under review. This is an important question as I currently face contempt of court on this issue.

IV. Can a local court rule supersede a State statute?

I raised questions about the appointment of a GAL in this case. The statute 2151.28.1 of Ohio as initiated by the Supreme Court of Ohio requires a GAL for abused or neglected children. Local rule DR36 of the Domestic Relations Court require the appointment of a GAL upon request of any party contradictory to the findings of Arizona's case law supported my the U.S. Supreme Court. While that may be acceptable in a divorce situation it is not acceptable for a local rule to supersede a state statute in this type of case. A fit parent is responsible for the minor child's inexperience.

V. Does a court abuse its power by issuing orders that if appealed would prevent a fit parent from seeing their child or properly getting proper control of their child?

The case at bar had several instances where the magistrate issued orders where filing objections would have prevented either seeing my daughter or properly getting my daughter into my home. The magistrate abused her power to achieve the outcome she desired in this case. This abuse of power put me in situations to allow more state involvement than I desired. There has not been a statute or case law I could find to prove this stance however the question remains the same.

Conclusion

For the foregoing reasons, this Court should grant the Petition for Writ of Certiorari. The Court may also wish to Consider summary reversal.

Respectfully submitted,
Brian A. Faught
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534 Smiley Ave.
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The Supreme Court of Ohio

Case No. 2008-0490

Entry – June 18, 2008

Katherine Bauman

-v-

Brian A. Faught

-v-

Kay Stevens et al

Upon consideration of the jurisdictional memoranda filed in this case, the Court declines jurisdiction to hear the case and dismiss the appeal as not involving any substantial constitutional question.

(Clermont County Court of Appeals; Nos. CA200611101 and CA200611102)

Thomas J. Moyer

Chief Justice

IN THE COURT OF APPEALS TWELFTH APPELLATE DISTRICT OF OHIO

CLERMONT COUNTY

CASE NOS. CA2006-11-101, CA2006-11-102

O P I N I O N - 1/22/2008

KATHERINE BAUMAN, Plaintiff

vs –

BRIAN A. FAUGHT, Defendant-Appellant/Cross-Appellee

vs –

KAY STEVENS, et al, Third Party Intervenors/Cross-Appellants CIVIL APPEAL FROM CLERMONT COUNTY COURT OF COMMON

PLEAS DOMESTIC RELATIONS DIVISION Case No. 98DM266 Brian A. Faught, 534 Smiley Avenue, Springdale, Ohio 45246, appellant/cross-appellee, pro se Laura Cogswell, 717 West Plane Street, Bethel, Ohio 45106, for Kay & Patton Stevens, third party intervenors/ cross-appellants

Mark J. Tekulve, 785 Ohio Pike, Cincinnati, Ohio 45202, for James Bauman, third party intervenor/cross-appellee BRESSLER, J.

{¶1} Defendant-appellant, Brian A. Faught, appeals a nonparental visitation decision from the Clermont County Court of Common Pleas, Domestic Relations Division.

Third-party intervenors, Kay and Patton Boggs, have filed a cross-appeal to the decision. We affirm the decision of the trial court.

{¶2} This matter began following opposing motions for custody filed by appellant andappellees, the children's maternal grandparents, following the death of the children's mother. The minor children in question are Jamie Kaitlyn Faught, the biological daughter of Katherine Bauman and adoptive daughter of appellant; and their biological son, Brian Alexander Faught. Appellant and Katherine Bauman divorced in February 1999. Katherine subsequently married James Bauman. Appellant and Katherine had shared parenting of the children pursuant to a shared parenting plan, wherein Katherine was the residential parent and appellant was the nonresidential parent. James and Katherine had a son born on March 4, 2005.

{¶3} Katherine died on April 10, 2005. On April 11, 2005, appellant filed an emergency motion for custody. Appellees filed a motion to intervene and for custody. On June 9, 2005, adopting the decision of the magistrate, the trial court ordered Brian Alexander to reside with appellant, and Jamie Kaitlin to reside with appellees for the remainder of the 2004-2005 school year and, upon completion, reside with appellant thereafter. On August 12, 2005, the trial court designated appellant residential parent and legal custodian of both children, and granted visitation and companionship time to appellees on the first and third weekends of each month. On August 12, the trial

court also appointed a guardian ad litem.

{¶4} On November 23, 2005, appellant filed a motion for contempt and to suspend visitation against appellees. James Bauman filed a motion to intervene and for companionship time. On December 20, 2005, the guardian ad litem filed a motion for payment of fees. On March 3, 2006, appellant filed a motion for reimbursement of fees.

{¶5} On March 16, 2006, a hearing was held on the pending motions. On June 13, 2006, the decision of the magistrate was filed, recommending that appellees be awarded companionship time with the children on the first and third weekends of each month through the end of 2006 and, effective January 1, 2007, companionship time on the first weekend of each month and an additional weekend each month to be arranged by appellant and appellees. Appellees were also granted one week of extended time in the summer provided that they advise appellant by May 15 each year of the week they wish to exercise. Further, the magistrate denied James Bauman's motion to intervene, but allowed appellees to arrange time, during their visitation, to have contact with James Bauman "to allow the children to have an ongoing relationship with their half-brother."

{¶6} Appellant filed multiple objections to the magistrate's decision. After review, the trial court modified the decision of the magistrate. The trial court reduced appellees' companionship time, awarding visitation for only "the first weekend of every month, as opposed to two weekends per month." The trial court also required appellees to be

responsible for all transportation during visitation. Finally, in regard to the extended summer visitation, the trial court ruled that appellant shall advise appellees by May 15 each year of the dates the children will be available. Appellant timely appeals, raising six assignments of error. On cross-appeal, appellees raise two crossassignments of error.

{¶7} Assignment of Error No. 1:

{¶8} "THE TRIAL COURT ERRED WHEN IT: "1) SET A VISITATION SCHEDULE AGAINST THE FATHERS [sic] WISHES AS EXPRESSED TO THE COURT; 2) SET A DATE TO DETERMINE WHEN THE THIRD PARTY INTERVENERS [sic] SHALL HAVE EXTENDED TIME FOR SUMMER VISITATION; 3) ALLOWING THE GRANDPARENTS TO ARRANGE TIME WITH STEPFATHER TO HAVE CONTACT WITH THE CHILDREN; 4) GIVES REQUIREMENTS FOR THE FATHER TO PROVIDE ACTIVITY SCHEDULES."

{¶9} In his first assignment of error, appellant argues that the trial court erred by setting the visitation schedule, granting appellees extended summer visitation, allowing appellees to arrange time with James Bauman, and requiring appellant to provide activity schedules. In this assignment of error, appellant relies on the United States Supreme Court decision in *Troxel v. Granville* (2000), 530 U.S. 57, 120 S.Ct. 2054. Appellant argues the decision of the trial court violates the mandates of *Troxel*. Most significantly, appellant challenges the constitutionality of Ohio's nonparental companionship and visitation statute. Appellant stresses that R.C. 3109.11 and R.C. 3109.051 are

unconstitutional under the *Troxel* standard.

{¶10} *Troxel* involves a similar factual situation to the case at bar. Following the father's death, the paternal grandparents sought visitation. Id. at 61. Similar to the instant matter, the mother did not oppose visitation altogether, but instead wished to limit the visitation to one day per month with no overnight stay. Id. The grandparents moved for a visitation order pursuant to the state of Washington's third-party visitation statute. Id. Under the Washington statute, "Any person may petition the court for visitation rights at any time including, but not limited to, custody proceedings." Id.

{¶11} In *Troxel,* the United States Supreme Court invalidated the Washington statute, finding that it "unconstitutionally infringes on that fundamental parental right." Id. at 67. The court held that the statute was "breathtakingly broad" because it allows *"[a]ny person"* to "petition the court for visitation rights *at any time.*" (Emphasis sic.)

{¶12} Appellant maintains that he has been found by the court to be a "fit parent" and has always allowed appellees to have companionship time with the children despite, on multiple occasions, appellees' failure to follow court orders and attempts to sabotage him. Appellant cites the Ohio Supreme Court's holding in *In re Martin,* 68 Ohio St.3d 250, 1994-Ohio-506, that "grandparents have no constitutional right to association with their grandchildren." Id. at 252. Further, appellant argues the statutes place a burden on a "fit parent" to demonstrate

that the decisions of the "fit parent" are in the best interests of the child. Appellant argues the magistrate and trial court failed to uphold his parental rights, and "continued to support third-parties as equal entities." Appellant contends that since he is a "fit parent" the trial court erred in setting the visitation schedule and awarding extended time for summer visitation. Appellant is frustrated with the continuing court involvement and argues that the state intrusion is a violation of his parental rights.

{¶13} R.C. 3109.11 sets forth "Companionship or visitation rights for parents or other relatives of deceased mother or father." The statute specifically provides, in part, "If either the father or mother of an unmarried minor child is deceased, the court of common pleas of the county in which the minor child resides may grant the parents and other relatives of the deceased father or mother reasonable companionship or visitation rights with respect to the minor child during the child's minority if the parent or other relative files a complaint requesting reasonable companionship or visitation rights and if the court determines that the granting of the companionship or visitation rights is in the best interest of the minor child. In determining whether to grant any person reasonable companionship or visitation rights with respect to any child, the court shall consider all relevant factors, including, but not limited to, the factors set forth in division (D) of section 3109.051 of the Revised Code."

{¶14} R.C. 3109.051(D) lists 16 factors a magistrate or

court must consider in determining "companionship or visitation rights to a grandparent, relative, or other person pursuant to this section or section 3109.11."

{¶15} *In Harrold v. Collier*, 107 Ohio St.3d 44, 2005-Ohio-5334, the Ohio Supreme Court examined the constitutionality of these nonparental-visitation provisions under *Troxel*. In *Harrold*, the court held that the Ohio provisions are constitutional; distinguishing the Ohio statutes from the Washington statutes at issue in *Troxel*, and finding that the Ohio statutes satisfy strict scrutiny. Id. at ¶44 and ¶47.

{¶16} First, the court stated that the Ohio statutes "limit the parties who can petition the court for visitation and limit the application of the statutes to cases where there is a specified predicate event or condition." Id. at ¶41. Second, "R.C. 3109.11 and 3109.12 expressly identify the parents' wishes and concerns regarding visitation as a factor the court must consider in making its determination." Id. at ¶42. "Ohio's nonparental-visitation statutes not only allow the trial court to afford parental decisions the requisite special weight, but they also allow the court to take into consideration the best interest of the child and balance that interest against the parent's desires." Id. at ¶43. Third, "while *Troxel* states that there is a presumption that fit parents act in the best interest of their children, nothing in *Troxel* indicates this presumption is irrefutable. The trial court's analysis of the best interests of a child need not end once a parent has articulated his or her wishes. By stating in *Troxel* that a trial court must accord at least

some special weight to the parent's wishes, the United States Supreme Court plurality does not declare that factor to be the sole determinant of the child's best interest. Moreover, nothing in *Troxel* suggests that a parent's wishes should be placed before a child's best interest. The state has a compelling interest in protecting a child's best interest, * * * and Ohio's nonparental visitation statutes are narrowly tailored to serve that compelling interest." Id. at ¶44.

{¶17} Appellant urges this court to reconsider and overrule the Ohio Supreme Court's decision in *Harrold*, and find the subject provisions of the revised code unconstitutional. We are required to follow and have no authority to overrule controlling Supreme Court authority. *Batting v. Forshey* (1982), 7 Ohio App.3d 72, 74. "It is a fundamental rule that '[d]ecisions of a court of last resort are to be regarded as law and should be followed by inferior courts * * * until they have been reversed or overruled.'" Id., quoting *Krause v. State* (1972), 31 Ohio St.2d 132, 148.

{¶18} As a result, we must determine whether the trial court erred by setting the visitation schedule, granting extended summer visitation, allowing appellees to arrange time with James Bauman, and requiring appellant to provide activity schedules.

{¶19} The standard of review for visitation and domestic relations cases is abuse of discretion. *Booth v. Booth* (1989), 44 Ohio St.3d 142, 144. "The term 'abuse of discretion'

connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶20} As a preliminary matter, we note that appellant argues that the trial court erred in setting a date for appellant to determine when appellees may exercise their extended visitation time. In his objections to the magistrate appellant argued that "the Magistrate erred * * * that Grandparents shall advise Father by May 15 of each year of the week they wished to exercise extended summer time. Extended time should be scheduled by Father based on school and other family obligations." The trial court in this case sustained appellant's assignment of error, granting appellant the relief sought by giving appellant the flexibility to decide when appellees' extended summer time may be exercised. Accordingly, we find this issue to be moot.

{¶21} In regard to the remaining issues, the trial court stated in its decision, "In the present case, the Court finds Defendant to be a fit and loving parent. The Court further finds that the third-party intervenors have a close relationship with the minor children. Accordingly, the Court finds that it is in the best interest of the minor children to continue to have a relationship with the thirdparty intervenors. The Court further finds, however, that the visitation schedule set forth by the Magistrate fails to give special weight to Defendant's wishes and concerns.

{¶22} "Upon review of the totality of the evidence presented, and specifically considering Defendant's wishes and concerns, the Court finds that it is in the best interest of the minor children for the third-party intervenors to be awarded visitation the first week of every month, as opposed to two weekends per month."

{¶23} Further, the trial court found the contact with James Bauman to be in the best interest of the children because, as the magistrate stated, it will "allow the children to have an ongoing relationship with their half-brother." Additionally, the trial court held that it was in the best interest of the children to require appellant to provide activity schedules to appellees.

{¶24} A review of the record clearly shows that the trial court did not "rubber stamp" the magistrate's decision as appellant suggests in his brief. The trial court's decision demonstrates that it considered the necessary factors in light of the facts of the case, including the best interests of the children and appellant's wishes and concerns as a parent. At the hearing, appellant testified that "two week[ends of visitation] every month is excessive." As a result the trial court modified the decision of the magistrate, awarding only one weekend per month to appellees. Further, appellant agreed that appellees should have extended visitation in the summer, but flexibility was also desired. Accordingly, as noted above, the trial court modified the magistrate's decision, allowing appellant to determine the dates the children would be available in the summer.

{¶25} In regard to James Bauman, appellant was asked at the hearing:

{¶26} "Q. Do you think it's important for the children to have a relationship with [their half brother]?

{¶27} "A: Absolutely.

{¶28} "Q: And they lived with James. Do you think its best that they continue that relationship?

{¶29} "A: I think it is."

{¶30} After a review of the record, we find no abuse by the trial court. Appellant's first assignment of error is overruled.

{¶31} Assignment of Error No. 2:

{¶32} "THE TRIAL COURT ERRED WHEN IT DISMISSED THE APPELLANTS [sic] MOTION FOR CONTEMPT AND TO SUSPEND VISITATION."

{¶33} Appellant argues in his second assignment of error that the trial court erred by dismissing the motion for contempt and to suspend visitation. Appellant notes that a three hour hearing was held on March 16, 2006 for the four pending motions, including the motion at issue in this assignment of error. Appellant argues, however, that the trial court did not provide enough time for him to present his case to the magistrate. Appellant further states that a continuance was not requested to the hearing because the magistrate "was very clear that the hearing would not be continued in progress and it was restricted to three hours."

{¶34} Appellant's argument is unpersuasive. A review of the transcript of the March 16 proceeding demonstrates that neither appellant nor his trial counsel ever attempted to raise the issue with the magistrate. Further, appellant presented no testimony or evidence at the hearing in support of the motion. Due to the absence of any evidence or testimony, the trial court did not err in denying appellant's motion. Appellant's second assignment of error is overruled.

{¶35} Assignment of Error No. 3:

{¶36} "THE TRIAL COURT ERRED BY1) NOT AWARDING FATHER ATTORNEY FEES; 2) ORDERING FATHER TO PAY HALF OF ALL OUTSTANDING COURT COSTS."

{¶37} Appellant argues in his third assignment of error that the trial court erred by not awarding attorney fees and ordering him to pay half of all court costs. Appellant argues that as a "fit parent," he "should not be subjected to the time and cost of defending my right to raise my children as I see fit." Further, appellant states that he is entitled to the court costs because he had to continually go to the multiple court proceedings due to appellees' "continued failure to abide by the court's orders."

{¶38} The decision to award attorney fees and allocation of court costs is within the sound discretion of the court. See *Rand v. Rand* (1985), 18 Ohio St.3d 356; *Carman v. Carman* (1996), 109 Ohio App.3d 698; *Hagemeyer v.*

Sadowski (1993), 86 Ohio App.3d 536, 567.

{¶39} The magistrate stated, "The Court finds that the issues presented in this matter were not frivolous: instead, the issues had merit and the parties had a genuine disagreement about what resolution would be best for the children." The trial court held that "the Decision of the Magistrate [was] supported by the record."

{¶40} After a review of the record, we find no abuse by the trial court in denying appellant's motion for attorney fees and ordering appellant to pay half of all outstanding court costs.

{¶41} Appellant's third assignment of error is overruled.

{¶42} Assignment of Error No. 4:

{¶43} "THE TRIAL COURT ERRED BY NOT HOLDING GRANDPARENTS IN CONTEMPT OF COURT FOR THEIR FAILURE TO RETURN THE CHILDRENS [sic] PERSONAL PROPERTY."

{¶44} Appellant cites the magistrate's decision of October 14, 2005 wherein the magistrate ordered appellees to return all of the children's property to appellant. Appellant cites the testimony of James Bauman during the March 16, 2006 hearing. Bauman testified that the children's beds and bedding are still in their bedrooms at his house the same as when the children lived there prior to the death of their mother. Appellant argues that the trial court erred by not holding the grandparents in contempt for their failure to return the children's property.

{¶45} A review of the record reveals that appellant did not properly raise and preserve the issue for appeal. Appellant maintains though that the issue was before the court because a provision was included in his "Proposed Plan for Visitation."

{¶46} We disagree with appellant's argument. Appellant did not file any motion with the magistrate for contempt against appellees seeking redress for the purported failure to return the children's personal property, nor did appellant raise the issue to the magistrate at the hearing. Further, appellant did not raise the issue to the trial court in any objections to the magistrate's decision. Accordingly, the issue is not properly before this court. Appellant's fourth assignment of error is overruled.

{¶47} Assignment of Error No. 5:

{¶48} "THE TRIAL COURT ERRED WHEN IT APPOINTED A GUARDIAN AD LITEM AND ORDERING FATHER TO PAY HALF OF ALL FEES OVER $500."

{¶49} In his fifth assignment of error, appellant argues the "trial court imposed its will on me by ordering a GAL instead of allowing me to choose with whom my children would associate." Appellant first argues that R.C. 2151.28 determines when a GAL shall be appointed and none of those situations were present in this case. In contrast, appellees argue that Clermont County Loc.R. DR 36 provides for the appointment of a GAL and the decision to appoint a GAL is within the discretion of the court. Appellant claims that Loc.R. DR 36 does not apply to the

case at bar; therefore, the trial court erred in appointing the GAL and ordering him to pay fees associated with the appointment.

{¶50} In the case at bar, the trial court stated, "The Defendant objects, stating that the Magistrate erred by '[g]ranting Motion to Appoint GAL.' More specifically, defendant states that '[a]s of August 12, 2005, it had been established by the Court that Father was a fit parent and as a fit parent acts and makes decisions in the best interest of the children.' Defendant's objection is not well taken as the Court finds the objections to be untimely filed."

{¶51} Accordingly, we find no error by the trial court in overruling appellant's objection. The order appointing the GAL in this case was filed on August 12, 2005. However, appellant did not raise any objection to the appointment of the GAL until he filed his objections to the decision of the magistrate on September 15, 2006. Appellant's fifth assignment of error is overruled.

{¶52} Assignment of Error No. 6:

{¶53} "THE TRIAL COURT ERRED WHEN IT ORDERED ALL PARTIES TO ATTEND THE 'KIDS PROGRAM' AND MEDIATION."

{¶54} In his final assignment of error, appellant argues the trial court erroneously ordered the parties to attend mediation and the "Kids Program." Appellant contends that the "Kids Program" is a mandate for a divorce situation, not the situation at bar. Further, appellant argues that he has been found to be a fit parent and

appellees are the parties that continually violated court orders and undermined appellant's authority as a parent.

{¶55} On June 9, 2005, the trial court ordered the parties to attend mediation. Appellant filed no objection to this order at the trial court level. As a result, appellant's assignment of error as it relates to the mediation order is without merit.

{¶56} In addition, it was within the sound discretion of the trial court to require appellant to attend the "KIDS Program." The facts herein establish that attendance in the program is in the best interest of the children. Appellant's sixth assignment of error is overruled.

{¶57} Cross-assignment of Error No. 1:

{¶58} "THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLEES IN THE SCHEDULE IT ESTABLISHED FOR GRANDPARENT VISITATION WHERE THE EVIDENCE DEMONSTRATED THE CHILDREN AND GRANDPARENTS HAD DEVELOPED A CLOSE, LIFE-LONG RELATIONSHIP."

{¶59} Cross-assignment of Error No. 2:

{¶60} "THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLEES IN FAILING TO GRANT EXTENDED VISITATION."

{¶61} In their cross-assignments of error, appellees argue the trial court erred in establishing the visitation schedule. Specifically, appellees argue that it is not in the best

interest of the children to reduce the contact with their maternal grandparents by one-half. Further, appellees argue the trial court erred in refusing to grant appellees extended visitation time of four weeks per year, even though appellant gave his approval to that quantity of time.

{¶62} Appellees' arguments are unpersuasive. As we determined in appellant's first assignment of error, the trial court did not abuse its discretion in determining companionship and extended visitation time. Appellees' assignments of error are overruled.

{¶63} Judgment affirmed. YOUNG, P.J., and POWELL, J., concur.

Court of Common Pleas Domestic Relations Division,

Clermont County

Case No. 98DM000266

Decision on Objections – November 1, 2006

Katherine Bauman (dec'd) Plaintiff

-v-

Brian Faught Defendant Susan Mineer Attorney for Defendant

-v-

Kay Stevens and Patton Stevens Third-party Interveners

Laura Cogswell Attorney for Third-party Interveners

This matter came before the Court pursuant to DR 41. The Decision of the Magistrate was filed on June 13, 2006. The Defendant filed objections to the Decision of the Magistrate on June 26, 2006. The Defendant filed supplemental objections to the Decision of the Magistrate on September 15, 2006. The objections are found to be timely filed. A transcript of the proceedings was filed on August 15, 2006. The transcript has been reviewed by the Court.

1. The Defendant objects, stating that "[p]er pretrial order June 2005, the Magistrate permitted Jamie, (Kaitlin) to remain in grandparents home granting the Father only visitation until a custody hearing

on August 3, 2005." Defendant objection is not well taken.

At the outset, the Court notes that Rule(E)(3)(a) of the Ohio Rules of Civil Procedure provides, in pertinent part, that "objections shall be specific and state with particularity the grounds for objection." Assuming, however, arguendo, that the objection was specific, the Court notes that Civil Rule 53(E)(3)(a) provides, in pertinent part, as follows:

> "Within fourteen days of the filing of a magistrate's Decision, a party may file written objections to the Magistrate's decision." (Emphasis added). Upon Review of the record, the Court finds that Defendant has failed to file objections in a timely manner.

2. The Defendant objects, stating that "[d]ecision dated August 12, 2005 establishing court orders (sic) for grandparents visitation against fathers wishes in violation of his 14th Amendment constitutional right to parent as outlined in Troxel v. Granville, 530 U.S. 530 at 69-70. adopted by Ohio law In re Fraizer, 2003-Ohio-1087. Harold v. Collier, 107 Ohio St. 3d 44, (sic)." Defendant's objection is not well taken as the Court finds Defendant' s objection to be untimely filed.

3. The Defendant objects, stating that the Magistrate

erred by "[g]ranting Motion to appoint GAL." More specifically, Defendant states that "[a]s August 12, 2005, it had been established by the Court that Father was a fit parent and as a fit parent acts and makes decisions in the best interest of the children." Defendant's objection is not well taken as the Court finds the objection to be untimely filed.

4. The Defendant objects, stating that "[t]he Magistrate was in error permitting this case to proceed beyond August 12, 2005, after establishing custody to Defendant, and denying Kay and Patton Stevens' original Motion for Custody." Defendant's objection is not well taken as the issue of grandparent visitation was before the Court.

5. The Defendant objects, stating that "[t]he Magistrate erroneously dismissed Father's Motion for Contempt and to Suspend Visitation stating that there was no testimony on this issue however Magistrate and (sic) would not allow any further testimony." Defendant's objection is not well taken as the Court finds the Decision of the Magistrate to be supported by the record.

6. The Defendant objects, stating that the "Magistrate erred in setting a visitation schedule and extended time for grandparents in violation of father's rights." Defendant's objection is well taken, in part.

   At the outset, the Court notes that the Due Process Clause of the Fourteenth Amendment protects the

fundamental right of parents to make decisions concerning care, custody, and control of their children. Troxel v. Granville (2000), 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49. The plurality in Troxel stated that if a fit parent's decision regarding non-parental visitation becomes subject to judicial review, "the court must accord at least some special weight to the parent's own determination." Id. At 70, 120 S. Ct. 2054, 147 L. Ed. 2d 49. The Supreme Court of Ohio has observed that grandparents had no legal right of access to their grandchildren at common law. In re Martin, 68 Ohio St. 3d 250, 252, 1994 Ohio 506, 626 N.E 2d 82, citing In re Whitaker (1988), 36 Ohio St. 3d 213, 214, 522 N.E. 2d 563. Additionally, the Supreme Court has held that "grandparents have no constitutional right of association with their grandchildren." Martin, Id. Rather, grandparents visitation rights can only be conferred by statute. Id.

In Ohio, ORC 3109.11 governs visitation rights where a parent of the child is deceased. Said section provides, in pertinent part, that if the parent of a minor child is deceased, the court may grant reasonable visitation rights if a motion requesting visitation rights is filed, and if the court determines that such visitation rights is in the best interest of the minor child in question. In determining whether to grant any person reasonable visitation rights with the minor child in question, the court shall consider all relevant factors, including but not limited to, the factors set forth in ORC 3109.051(D). ORC

3109.051(D) provides many factors that a court must consider in determining visitation rights. This section specifically requires a court to consider the wishes and concerns of the child's parents, as expressed to the Court. Therefore, as held by the Ohio Supreme Court in Harold v. Collier (October 10, 2005), 107 Ohio St. 3d 44, 836 N.E. 2d 1165, "a trial court must give special weight to that factor in making its visitation determination, thus protecting a parents due process rights."

In the present case, the Court finds Defendant to be a fit and loving parent. The Court further finds that the third-party intervenors have a close relationship with the minor children. Accordingly, the Court finds that it is in the best interest of the minor children to continue to have a relationship with the third-party intervenors. The Court further finds, however, that the visitation schedule set forth by the Magistrate fails to give special weight to Defendant's wishes and concerns.

Upon review of the totality of the evidence presented, and specifically considering Defendant's wishes and concerns, the Court finds that it is in the best interest of the minor children for the third-party intervenors to be awarded visitation the first weekend of every month, as opposed to two weekends per month. Accordingly, the Decision of the Magistrate shall be modified to reflect that the third-party intervenors shall be awarded visitation time with the minor

children, i.e., Jamie and Alex on the first full weekend of each month (beginning with the first Friday of the month) from 7:00 p.m. Friday to 6:00 p.m. Sunday.

7. Defendant objects, states that "[t]he Magistrate erred in arranging an exchange point for the children." More specifically, Defendant states that he "has three children, a pregnant wife, works full time, transports the children to and from school, activities and counseling." Defendant further states that "[t] here are not enough hours in the day to meet all of his obligations." Further, Defendant states that "[t] ransporting the children to and from takes @ (sic) 2 ½ hours; 2 ½ hours that father does not have. The grandparents are retired and do not have the daily obligations and family responsibilities. They have time on their hands. Grandparents should be responsible for transporting to and from visitation." Defendant's objection is well taken.

   Upon review of the record, the Court finds that it is appropriate and reasonable for the third-party interveners to be responsible for the transportation to and from visitation. Accordingly, third-party interveners shall be solely responsible for visitation transportation.

8. Defendant objects, stating that "the Magistrate erred in Paragraph # 5 wherein she states that the Grandparents shall advise Father by May 15 each year of the week they wish to exercise extended

summer time." More specifically, Defendant states that "[e]xtended time should be scheduled by Father based on school and other family obligations." Defendant's objection is well taken.

Upon review of the record, the Court finds that the Decision of the Magistrate shall be modified to reflect that Defendant shall advise the third-party interveners by May 15 each year of the dates available for their extended summer time visitation, unless otherwise agreed by the parties.

9. Defendant objects, stating that the Magistrate erred by requiring Father to "provide grandparents with activity schedules as soon as he has them." Defendant's objection is not well taken as the Court finds the decision of the Magistrate to be appropriate and in the best interest of the minor children.

10. Defendant objects, stating that "[g]randparents may arrange time with stepfather to have contact with the children during their visitation and companionship time to allow the children to have an ongoing relationship with their half-brother." More specifically , Defendant states that, "[c]ontact between the children and anyone else should not be decided by the grandparents. The defendant is the father and is entitled to make decisions about the children's interactions and relationships. Stepfather has attempted to undermine Father's authority as a parent and any contact that he has with the children should be subject to Father's approval or denial."

11. Defendant's objection is not well taken as the Court finds the Decision of the Magistrate to be appropriate and is in the best interest of the children.

12. Defendant objects, stating that "[t]he Magistrate erred by not awarding the Father attorney fees." Defendant's objection is not well taken as the Court finds the Decision of the Magistrate to be supported by the record.

13. Defendant objects, stating that "[t]he Magistrate erred when ordering the father to pay half of all outstanding court costs." Defendant's objection is not well taken as the Court finds the Decision of the Magistrate to be supported by the record.

14. Defendant objects, stating that "[t]he Magistrate erred in her failure to hold the grandparents in contempt for failure to return children's personal property in violation of the October 14, 2005 decision including a copy of the account that was set up for the children at Key Bank as a memorial to their mother, their personal belongings from their mother's house, and their mother's medical history for the benefit of the children." Defendant's objection is not well taken as the Court finds the Decision of the Magistrate to be supported by the record.

Wherefore, the Decision of the Magistrate is Modified to reflect this Decision of the Court.

10/31/06 Judge Michael J. Voris

Court of Common Pleas Domestic Relations Division,

Clermont County

Case No. 98DM000266

Decision of the Magistrate – June 12, 2006

Katherine Faught aka Bauman (Deceased) Plaintiff

- v-

Brian A. Faught Defendant

-v-

Kay Stevens and Patton Stevens Third-party Interveners

This matter came before the Court on March 16, 2006, on the following motions: Kay and Patton Stevens' Motion for Custody, filed on May 25, 2005; James Bauman's Motion to Intervene and for Companionship Time, filed on November 23, 2005; Defendant's Motion for Contempt and to Suspend Visitation, filed on November 23, 2005; the Guardian ad Litem's Motion for Payment of Fees, filed on December 20 2005; and Defendant's Motion for Reimbursement of Fees, filed on March 6, 2006. Defendant ("Father") was present in court with counsel, Susan Mineer. Kay and Patton Stevens ("Grandparents") were present in court with counsel, Laura Cogswell. James Bauman ("Stepfather") was present in court with counsel, Mark Tekulve. The Guardian ad litem ("Gal"), Denise Barone, was also present in court.

Findings of Fact and conclusions of Law

Father is residential parent and legal custodian of the children, Jamie Kaitlin Faught (born April 9, 1994) and Brian Alexander Faught (born April 1, 1997). As set forth in the Decision of the Magistrate journalized on August 12, 2005, the Grandparents have visitation/companionship time on the first and third full weekends of each month, from 7:00 p.m. Friday to 6:00 p.m. Sunday. The Decision journalized on October 14, 2005, contains an order that Grandparents shall not allow the children to have contact with stepfather. The Pretrial Order journalized on February 2, 2006, provides that Stepfather may have contact with the children during Grandparents' visitation/companionship time, as authorized by Father. Grandparents are requesting that they continue to have at least the first and third weekends of each month, although they would prefer an alternating weekend schedule. Grandparents also request that they be allowed to have the children spend time, during their visitation/companionship time, with Stepfather and with the children's halfbrother. Stepfather's Motion requests that he be given an order for visitation/captainship time with the children. The GAL requests an order for her fees to be paid and Father requests an order that Grandparents reimburse him for his attorney fees, GAL fees, mediation expenses and court costs.

The Findings of Fact set forth in the Decision of the Magistrate journalized on August 12, 2005, are incorporated as if fully rewritten herein.

Father filed a Proposed Plan for Grandparents' visitation/companionship time on March 6, 2006. Father requests that he make arrangements with Grandparents at the beginning of each month for them to have visitation/companionship time with the children one weekend each month, and that weekend be based on the children's and the family's schedule of activities. Grandparents request that they continue to have at least the first and third weekends of each month, that they have scheduled holiday time and that they have two two-week periods of extended time with the children during the summer. Stepfather indicated that he would not request a separate schedule of visitation/companionship time if he weeks allowed to have contact with the children during Grandparent's time.

The GAL indicated that Grandparents should have at least one weekend each month of scheduled time and two weekends of each month would be helpful to the children. She also indicated that it would be a bit much for Grandparents to have the standard parenting time order with regard to the holidays.

Father testified that has not given any of the other parties in this matter any reason to believe that we would not be flexible with providing visitation/companionship time with the children. Instead, he has offered extra time to the Grandparents and stated that to do otherwise would be selfish of him, that he is trying to achieve a balance between providing quality time for the children and Grandparents, and also maintaining time for this family to have to opportunity to have activities together.

The parties in this matter have come a great distance in terms of their understanding and trust of each other since April 2005. Plaintiff's death left a large hole in the fabric of this extended family, and healing that would has not been an easy task for any of the adults, and certainly not the children. Each of the adults is doing what he/she thinks is best for the children. The Court recognizes and credits the adults for being able to state that each of the said/did things last April and May that, given calmer circumstances and the benefit of hindsight, they would not say or do again. The court does not doubt for a minute that the Father and Grandparents will, eventually, come to a place where they can arrange time for the children to be with Grandparents without a schedule mandated by the Court. However, there needs to be some time before that happens; i.e., the trust between the parties is not quite to the point where that kind of "loose" schedule is comfortable for everyone.

There is no question that it is in the children's best interest to have time with Grandparents. The issue has been and continues to be the schedule. The Court finds that it is best for the children to have visitation/companionship with Grandparents and Stepfather, as set forth below.

There was no testimony presented on Defendant's Motion for Contempt and to Suspend Visitation and, therefore, that Motion is dismissed.

The order of Appointing GAL, journalized August 12, 2005, provides that Grandparents shall pay the first $500 of the GAL fees and that Father and Grandparents shall

each pay one-half of any of the GAL's fees above $500. Grandparents paid the $500 deposit and an additional $462.50. The GAL requests an order for Father to pay $462.50 towards her fees. The Motion is granted.

Father requests that he be reimbursed for his expenses in litigating this matter on the basis that he made every effort to resolve the parenting and visitation/ companionship issues outside of court, that he has not refused to allow contact between the children and Grandparents, and that Grandparents requested the GAL. Father incurred attorney fees in the amount of $4657.50 (Defendant's Exhibit A). The court finds that the issues presented in this matter were not frivolous; instead, the issues had merit and the parties had a genuine disagreement about what resolution would be best for the children. The Court acknowledges that the parties made serious efforts to resolve the issues outside of a hearing, and that, in many ways, they were successful. The Court finds that the issues and the time to resolve these matters were not due to any party's inappropriate or merit less claims and, therefore, no award of attorney fees or expenses is granted.

Decision

1. Grandparents shall have visitation and companionship time with Jamie and Alex on the first full weekend of each month (beginning with the first Friday of the month) and on the third full weekend of the month from 7:0 p.m. Friday to 6:00 p.m. Sunday. Grandparents and Father shall meet at the Wendy's

on Ohio Pike at I-275 to exchange the children for visitation/companionship time.

2. Unless the parties agree on a different week, Grandparents shall have one week of visitation and companionship time with the children from 7:00 p.m. July 21, 2006 to 7:00 p.m. July 28, 2006.

3. In September 2006, because Labor Day weekend falls on the first full weekend of the month, Grandparents' weekends with the children shall be on the weekends of September 8 and 22, unless Father wishes for the schedule to remain the first and third weekends of that month.

4. Effective January 1, 2007, Grandparents shall have visitation and companionship time with Jamie and Alex on the first full weekend of each

5. Month (beginning with the first Friday of the month). Grandparents and Father shall arrange, by the fifth of each month, for a second weekend of visitation/companionship time for the children and Grandparents that month, depending on the children's and Father's family's schedules.

6. Beginning with the summer school break in 2007, Grandparents shall be entitled to one full week (total of seven days) visitation/companionship time with the children. Grandparents shall advise Father by May 15 of each year of the week they wish to exercise that time, but it shall not be before July 15 each year, unless the parties agree otherwise.

7. Father and Grandparents shall arrange, by December 5 each year, for Grandparents to have some additional visitation/companionship time with the children during their winter school break, which day shall not be December 24, 25, 31 or January 1, unless the parties agree otherwise.

8. Father shall provide Grandparents with the children's activity schedules as soon as he has the schedules/calendar (including concerts, plays, performances, games, practices, etc.) so that Grandparents may attend the children's activities, even if those activities do not occur during their visitation/companionship time. Provided they have the children's schedules at least 24 hours ahead of time, Grandparents shall ensure that the children are delivered to the activities on a time basis during their

9. visitation/companionship time. Failure to do so may be cause to modify the visitation and companionship time.

10. Grandparents may arrange with Stepfather to have contact with the children during their visitation and companionship time to allow the children to have an ongoing relationship with their half-brother.

11. Father shall ensure that the children continue in counseling to the extent recommended by their counselor.

12. Grandparents shall continue in counseling with Dr.

Eugene Smiley, unless/until Dr. Smiley indicates that continued counseling is no longer necessary.

13. Neither party shall (and the parties shall make certain that on one else shall) when communicating with or within 100 feet of the children, discuss in any manner whatsoever the following: this case; any testimony; any pleadings; any interview conducted by the Court; any conversation with his or her attorney; any paperwork in the divorce case; or any part of the parenting investigation or psychological evaluation or any report thereon. Neither party shall (and the parties shall make certain that no one else shall) make disparaging remarks regarding the other party when communicating with or within 100 feet of the children.

14. Stepfather's Motion to Intervene and for Companionship Time is denied.

15. Father's Motion for Contempt and to Suspend visitation is denied.

16. Father shall pay $462.50 towards the GAL fees.

17. Father's Motion for Reimbursement is denied.

18. Father and Grandparents shall each pay to the Clerk of Courts one-half of any outstanding costs incurred in this matter since May 25, 2005.

June 9, 2006 Penny A. Gates, Magistrate

Entry Adopting Magistrates Decision: Pursuant to

Civil Rule 53, the Court hereby adopts the Magistrate's Decision.

6/13/06 Judge Michael J. Voris

Court of Common Pleas Domestic Relations Division,
Clermont County
Case No. 98DM000266
Decision of the Magistrate – October 14, 2005
Katherine Faught aka Bauman (Deceased) Plaintiff

- v-

Brian A. Faught Defendant

This matter came before the Court on October 11, 2005, for a report from the GAL, Denise Barone. None of the parties were present in the hearing room. Father was represented by Susan Mineer. Kay and Pat Stevens, the maternal grandparents, were represented by Laura Cogswell. Ms. Barone was also present. The Court reviewed the GAL report, submitted on October 7, 2005.

Decision:

1. The Stevenses shall continue to have visitation, as set forth in the Decision of the Magistrate dated August 12, 2005. However, their continued visitation is conditional on their participation in counseling, as set forth below.

2. The Stevenses shall participate in counseling with Dr. Eugene Smiley (513-324-3999), on a weekly basis, unless Dr. Smiley recommends otherwise. The Stevenses shall provide Ms.

3. Barone (GAL) with verification that they are attending counseling with Dr. Smiley as ordered.

4. Father shall participate in counseling with Dr.

Smiley and the Stevenses to the extent recommended by Dr. Smiley.

5. Father shall ensure that the children continue to attend their support group meetings at Fernside, and that Jamie continues with her individual counselor.

6. Father and the Stevenses shall sign releases, provided by Ms. Barone, to allow Ms. Barone to speak with their counselor for the purpose of the pending litigation.

7. The Stevenses shall return the children's personal property to Father.

8. Neither party shall (and the parties shall make certain that no one else shall) when communicating within 100 feet of the children, discuss in any manner whatsoever, nor provide any documentation whatsoever to the children, the following: this case; any testimony; any pleadings; any interview conducted by the Court; any conversations with his or her attorney; any paperwork in the divorce case; or any part of the mediation or parenting investigation or psychological evaluation or any report thereon. Neither party shall (and the parties shall make

9. Certain that no one else shall) make disparaging remarks regarding the other party when communicating with or within 100 feet of the children.

10. The Stevenses shall ensure that James Bauman has

no contact with the children during their visitation, until further order of the Court.

11. This matter is set for a report on December 5, 2005, at 8:00 a.m., for one-half hour.

October 14, 2005 Penny A. Gates, Magistrate

Entry Adopting Magistrates Decision: Pursuant to Civil Rule 53, the Court hereby adopts the Magistrate's Decision.

Judge Michael J. Voris

Court of Common Pleas Domestic Relations Division,

Clermont County

Case No. 98DM000266

Decision of the Magistrate – August 12, 2005

Katherine Faught aka Bauman (Deceased) Plaintiff

- v-

Brian A. Faught Defendant

This matter came before the Court on August 3, 2005, on the following motions: Defendant's Emergency Motion for Immediate Custody, filed April 11, 2005; and the Stevens' (maternal grandparents) Motion to Intervene, Motion for Temporary Order, and Motion for custody, all filed on May 25, 2005. The maternal grandparents also filed a Motion for Appointment of Guardian ad Litem on July 25, 2005. The maternal grandparents, Kay and Pat Stevens were present with counsel, Laura Cogswell. Defendant was present in court with counsel, Susan Mineer.

Findings of Fact and Conclusions of Law

The last parenting order in this case was journalized on March 29, 2000, awarding the parties shared parenting of their two minor children, Jamie Kaitlin (born April 9, 1994) and Brian Alexander (born April 1, 1997). Plaintiff died on April 10, 2005. The maternal grandparents request to intervene and be designated custodian of the

parties' minor children. Defendant wishes to be designated residential parent and legal custodian.

Plaintiff and Defendant were married on April 15, 1995. Plaintiff filed for divorce in March 1998. For some time during the marriage, Plaintiff and Defendant and the children resided with the maternal grandparents. Plaintiff continued to reside with her parents for approximately six to nine months after the divorce was filed. Within six months of filing the complaint for Divorce, Plaintiff and the children moved from the maternal grandparents' home to live with James Bauman. The Decree of Divorce was journalized in February 1999. Plaintiff married Mr. Bauman in June 2000. The children have not resided with the maternal grandparents moving out of their home in 1998.

Defendant has exercised his parenting time consistently since he and Plaintiff were divorced. Defendant acknowledged that Jamie started having some issues in early 2005, and he did not push the issue of exercising parenting time with her. Defendant exercised extended parenting time with both children seven to ten days at the end of July 2005. After Plaintiff died, Alex went to live with Defendant. Defendant agreed to allow Jamie to continue residing with the Stevenses until the end of the school year.

Kay Stevens testified that she and Jamie are really close and always have been, that she has practically raised Jamie. She goes fishing and camping with Jamie. Jamie has been attending Amelia elementary School. At

the end of the last school year, she became concerned that the Defendant would remove Jamie from the school, so she spent all day, for two days at the school to make sure that Defendant did not remove Jamie from the school. Ms Stevens testified that she tries to prepare Jaime to spend time with her father and tells Jamie that "she'll have to be strong." Ms. Stevens testified that she tells her to go and have a good time.

Ms. Stevens testified that if Jamie did not want to see Defendant, she would not force the issue. Ms. Stevens testified that she is concerned about Jamie changing schools because she has always attended school in Amelia. However, the Stevenses do not live in the Amelia school district, and Jamie will be changing schools because she will be attending middle school. Ms. Stevens is concerned about Jamie going to school in Defendant's school because it is a city school and Jamie is used to country schools. However, Ms. Stevens does not know which school district Defendant resides. Ms. Stevens is also concerned about Defendant's home, which she has seen on the internet, but which she has never visited.

Defendant resides in Springdale in a home with his wife and youngest child. Alex would be attending Springdale Elementary School and Jamie would be attending Princeton Middle School. Defendant has been with his present employer for one year, but has been in the same industry for more than 12 years. Defendant testified that he and the Stevenses have been able to maintain a civil relationship outside of the court-related issues. He is

concerned that Jamie knows more than she should about some of the issues before the court. Defendant testified that while they were on vacation, Jamie called Ms. Stevens on Sunday when they arrived and then on Tuesday and on Friday; they returned home on Saturday. On Saturday evening, Jamie wanted to see here grandparents, and Defendant called and made arrangements for them to pick up Jamie a day or two early.

Although the maternal grandparents' motions addresses both children, Ms. Stevens's testimony was almost exclusively about her relationship and concerns about Jamie. She testified that she has filed no similar motions with regard to Plaintiff's youngest son, who continues to reside with his father. Ms. Stevens presented no credible testimony about anything inappropriate in Defendant's living situation or any inappropriate parenting issues.

The court finds that, based on the factors set forth in RC 3109.04 (F)(1) that are applicable to this case, it is in the children's best interest for Defendant to be designated residential parent and legal custodian. The Court finds particularly compelling that Defendant has been involved with the parties children, has exercised his parenting time, has an appropriate living situation, and has encouraged contact between the children and the maternal grandparents. The Court finds that Ms Stevens, at least subconsciously, is substituting Jamie for here deceased daughter. The court also finds that it is appropriate to grant the maternal grandparents' motion to intervene for the purpose of awarding them visitation and

companionship time.

The Court further finds that immediate relief is justified in this case, based on the court's concern for the children's emotional health and the pending first day of school. The interim order shall not extend more than 28 days from the date of its entry unless, within that time and for good cause shown, the court extends the interim order for an additional 28 days. Civ. R. 53(E)(4)©.

Decision

1. Defendant is designated residential parent and legal custodian of the minor children, Jamie Kaitlin (born April 9, 1994) and Brian Alexander (born

2. April 1, 1997), effective immediately. The children shall attend school in Defendant's school district.

3. Pat and Kay Stevens shall have visitation and companionship time on the weekends of August 26 and September 16, from 7:00 p.m. Friday to 6:00 pm Sunday. Thereafter, Pay and Kay Stevens shall have visitation and companionship time on the first and third full weekends (defined as Friday, Saturday, and Sunday) of each month, from 7:00 pm Friday to 6:00 pm Sunday.

4. Defendant and the Stevenses shall meet at the Wendy's on Ohio Pike at I-275 to exchange the children for visitation.

5 Pat and Kay Stevens shall be responsible for

transporting the children to their school events and extra-curricular activities during their visitation and companionship time. Failure to do so may be cause to modify the visitation and companionship time.

6. Neither party shall (and the parties shall make certain that no one else shall) when communicating with or within 100 feet of the children, discuss in any manner whatsoever the following: this case; any testimony; any pleadings; any interview conducted by the Court; any conversation with his or her attorney; any paperwork in the divorce case; or any part of any parenting investigation or psychological evaluation or any report thereon. Neither

7. party shall (and the parties shall make certain that no one else shall) make disparaging remarks regarding the other party when communicating with or with 100 feet of the children.

8. Defendant shall ensure that the children continue to participate in the Fernside program.

9. Defendant shall enroll the children in counseling designed to help them deal with issues surrounding their mother's death.

10. Pursuant to the maternal grandparents' motion, a GAL is appointed by separate entry.

August 12, 2005 Penny A. Gates, Magistrate

Entry Adopting Magistrates Decision: Pursuant to Civil Rule 53, the Court hereby adopts the Magistrate's

Court of Common Pleas Domestic Relations Division,

Clermont County

Case No. 98DM000266

Decision of the Magistrate – June 9, 2005

Katherine Faught aka Bauman (Deceased) Plaintiff

- v-

Brian A. Faught Defendant

This matter came before the Court on June 7, 2005. Defendant was present in Court with counsel, Susan Mineer. Kay and Patton Stevens, the children's maternal grandparents, were present in court with counsel, Laura Cogswell. The pending motions are pending before the Court: The Defendants Emergency Motion for Immediate Custody, filed April 11, 2005; and the maternal grandparents' Motion to Intervene, Motion for Temporary Orders, and Motion for Custody, All filed May 25, 2005.

Decision:

1. Jamie Kaitlin (born April 9, 1994), shall continue to reside withKay and Patton Stevens-they are not granted custody of Jamie Kaitlin, nor do they have authority to authorize any medical treatment of any kind. Defendant shall have parenting time with Jamie Kaitlin every weekend from Friday at 5:00

2. p.m. to Sunday at 5:00 p.m. Defendant and maternal grandparents shall meet at the Wendy's on

Beechmont to exchange Jamie Kaitlin.

3. Brian Alexander (born April 1, 1997) shall continue to reside with Defendant.

4. Defendant has exclusive right to authorize medical treatment for the children.

5. On June 26, 2005, Defendant shall deliver both children to the maternal grandparents at 5:00 p.m. at Wendy's on Beechmont. On July 1, 2005 the maternal grandparents shall deliver both children to Defendant. On July 3 Defendant shall return Jamie Kaitlin to the maternal grandparents.

6. Defendant shall have both children from July 22, 2005, at 5:00 p.m. to August 1, 2005, at 5:00 p.m.

7. Both the maternal grandparents and the Defendant shall ensure that both children participate in the Fernside Program; the parties were supplied with informational brochures in Court.

8. Neither party shall (and the parties shall make certain that no one else shall) when communicating within 100 feet of the children, discuss in any manner whatsoever the following: this

9. case; any testimony; any pleadings; any interview conducted by the Court; any conversations with his or her attorney; any paperwork in the divorce case; or any part of the mediation or parenting investigation or psychological evaluation or any

report thereon. Neither party shall (and the parties shall make certain that no one else shall) make disparaging remarks regarding the other party when communicating with or within 100 feet of the children.

June 7, 2005 Penny A. Gates, Magistrate

Entry Adopting Magistrates Decision: Pursuant to Civil Rule 53, the Court hereby adopts the Magistrate's Decision.

6/9/05 Judge Michael J. Voris